



Asia Justice Coalition Submission to the UN Special Rapporteur on the independence of judges and lawyers

The promise of legal empowerment is that it can expand and transform access to justice by breaking down the barriers that prevent people from exercising their rights and accessing legal remedies. This is particularly important for marginalized and vulnerable communities, such as women, children, minorities, and the poor, who often face structural barriers and discrimination that make it difficult for them to access justice. By expanding access to justice and empowering individuals and communities, legal empowerment contributes to the rule of law, good governance, and human rights.

The Asia Justice Coalition¹ (AJC) recognises that prioritising the building of women’s professional leadership in the law opens up possibilities for legal empowerment and further access to justice. This contributes to the aim of the Coalition to ensure justice and accountability for grave crimes in Asia, and to strengthen capacity and collective advocacy of Asian civil society actors, legal actors and their allies in regard to international accountability for serious violations of international human rights and humanitarian law committed in Asia.

Full legal empowerment which we define here as the ability for individuals to know and exercise their rights, is only possible where legal systems—and therefore the actors within—are representative and inclusive of the diverse lived experience of the society in which they work. Therefore, this submission argues that prioritising women’s leadership in international law is central to achieve equal and effective justice for all and to “build effective, accountable and inclusive [legal] institutions at all levels”, as stated in Sustainable Developmental Goal 16.²

Barriers to Access to Justice because of lack of women

Developing a gender-sensitive legal system is a prerequisite for the full and non-discriminatory realization of human rights for all, and the achievement of gender equality on the ground. Despite important progress over the past few decades, globally women have yet to be

¹ This submission shall be attributed to the Asia Justice Coalition secretariat; its contents may not necessarily reflect the position of a specific Member and/or all Members of this Coalition.

² United Nations Department of Economic and Social Affairs, Sustainable Development, Goal 16, <https://sdgs.un.org/goals/goal16>.

considered as key actors in the administration of justice, and their equality before the law and the courts has yet to become a reality in many countries.³

The trust that societies and women themselves may have in the legal system is essential if courts and tribunals are to be responsive to women's needs and protect women's human rights. Former United Nations High Commissioner for Human Rights, Navanethem Pillay, has stated that the only way to ensure women's perspectives in the administration of justice, including in judgments delivered by national tribunals, is through women's life experience and therefore through the appointment of women judges who represent the diversity of society and are able to tackle judicial issues with fitting sensitivity.⁴ The importance of ensuring adequate representation of women in public offices has been recognized at the international level, *inter alia*, in the Convention on the Elimination of All Forms of Discrimination Against Women⁵ and the Beijing Declaration and Platform for Action.⁶

Increasing steps to ensure the equal representation of women and men in the legal system is essential for the promise of legal empowerment. Where challenges exist in identifying female legal professionals to be appointed as judges, prosecutors or included in the list of defence counsel, creative strategies, including broadening outreach and networking activities, should be implemented. This is crucial because as the Office of the Special Rapporteur has noted before, the global increase in practices that undermine, limit, restrict and hinder the practice of law continue to persist. Lawyers are especially vulnerable when their activities are focused on the fight against corruption, the defence of human rights, women's rights, the protection of ethnic, racial, religious or national minorities, indigenous peoples, the LGBTQI+ community, the environment or other issues of public relevance. Restrictions on the work of lawyers have increased as a result of the measures adopted by the States in response to the coronavirus disease (COVID-19) pandemic.⁷ In international law, women continue to face barriers of entry relating to courts and international mechanisms addressing international justice and accountability. By facilitating such access, women leaders and survivors of international harms can exercise their power, agency and leadership, proving their relevance to international legal mechanisms but also the relevance of the mechanisms themselves.

Barriers to entering/staying in the profession because of gendered biases

The development of women's expertise in international law is critical not just in relation to the specific practise of a type of law, but also the use of the particular language of the law. This 'legal fluency' provides access to transnational networks, other legal jurisdictions, and sites of

³ Current Levels of Representation of Women in Human Rights Organs and Mechanisms: Ensuring Gender Balance, Report of the Human Rights Council Advisory Committee, A/HRC/47/51, 21 May 2021.

⁴ Statement by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights, International Association of Women Judges, Jubilee Biennial Conference, Seoul, 12 May 2010.

⁵ For example, article 7 (b) of the Convention on the Elimination of All Forms of Discrimination against Women recognizes women's right "to perform all public functions at all levels."

⁶ See Beijing Declaration and Platform for Action, Strategic objective G.1., para. 190 (a).

⁷ Protection of lawyers against undue interference in the free and independent exercise of the legal profession Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, A/HRC/50/36, 22 April 2022.

international politics and power. This is then self-perpetuating: the more access women have to these sites of power, the more influence they can have. The more influence, the more inclusion of other women.

AJC recognises three distinct challenges in developing women’s leadership in international law, in particular, in the Asia-Pacific region. First, there are high levels of gender disparity and harassment in legal practice in the region, and gendered assumptions about women’s roles that prevent their advancement in legal spaces. The second challenge is the dual exclusivity of international law. Third is the challenge of the underutilisation of international law, and therefore impunity for international crimes, in Asia. These three challenges are further elaborated on below.

Gender Disparity and Harassment in Legal Practice

Women legal practitioners across Asia face significant challenges in legal practice in the domestic legal profession.

For example, according to the Bangladesh Legal Aid and Services Trust (BLAST) in 2016, ‘on average 30% of legal academics are women, but only 10% of those in the legal profession [in Bangladesh] are female’.⁸ According to BLAST, women lawyers cite concerns from ‘physical and sexual harassment by male colleagues’, to ‘facing patronizing and gender biased behaviour from colleagues and clients’, to basic lack of toilet facilities for women in court settings.⁹ Furthermore, a 2013 study found that India had the second lowest ‘feminization’, or rate of growth in women in the legal sector out of 86 countries surveyed.¹⁰ Like in Bangladesh, women legal practitioners in India face sexual harassment and hostility from male colleagues, including from judges.¹¹ In Sri Lanka, importantly, women outnumber men in the legal profession,¹² despite women being the minority in the workforce¹³— nevertheless, the number of women ‘decreases as the hierarchy of the court increases’.¹⁴

⁸ Bangladesh Legal Aid and Services Trust, ‘Women in Justice Project’, https://www.blast.org.bd/index.php?option=com_content&view=article&id=530.

⁹ Ibid.

¹⁰ Ethan Michelson, ‘Women in the Legal Profession, 1970-2010: A Study of the Global Supply of Lawyers’, Indiana Legal Studies Research Paper No 218, 23 December 2012, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2193028.

¹¹ Soni Mishra, ‘The Sexist Bar’, The Week, 13 November 2016, <https://www.theweek.in/theweek/cover/gender-discrimination-in-judiciary.html>.

¹² Ayomi Aluwihare, ‘Practitioners’ Perspectives: Law Regarding Gender Parity in Sri Lanka’, Asia Business Law Journal, 21 May 2019, <https://law.asia/law-regarding-gender-parity-in-sri-lanka/>.

¹³ UN Women, ‘UN Women Sri Lanka’, last accessed 2 September 2021, <https://asiapacific.unwomen.org/en/countries/sri-lanka>.

¹⁴ Ms Mónica Pinto, UN Special Rapporteur on the Independence of Judges and Lawyers, Preliminary Observations and Recommendations of the Special Rapporteur of the Official Joint Visit to Sri Lanka, 7 May 2016, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19942&LangIE>.

Furthermore, a 2020 Thomson Reuters study charted the gender disparity between entry-level roles and senior legal roles in top law firms.¹⁵ It found that in the Asia Pacific region, ‘advancement to law firm leadership is regarded as incompatible with women’s tendency to shoulder a larger share of domestic responsibilities’.¹⁶ This indicates a gendered assumption about women’s roles that necessarily must be overcome.

Dual Exclusivity of International Law

In 1991, Hilary Charlesworth, Christine Chinkin, and Shelley Wright argued that, ‘both the structures of international law-making and the content of the rules of international law privilege men; if women’s interests are acknowledged at all, they are marginalised. International law is a thoroughly gendered system.’¹⁷ At the core of Charlesworth, Chinkin, and Wright’s argument was that international law, like much of domestic law, is based on perpetuating gendered structures and thus structural change—change that disrupts the status quo—was necessary to incorporate both women’s lived experiences and more women practitioners. A decade ago, Charlesworth was not convinced that the international legal sphere had progressed.¹⁸

In fact, the gender disparity in international law has been highlighted by the recent United Nations Human Rights Council report entitled ‘Current Levels of Representation of Women in Human Rights Organs and Mechanisms: Ensuring Gender Balance.’ The 2021 report indicated that, specifically related to gender representation in the prestigious positions of rapporteurships, ‘only 16 of the 38 special rapporteurships with thematic mandates are held by women, and out of the 11 country-specific mandates only 2 are held by women. [Further] there are 11 Special Procedures positions that have never been held by women on issue areas such as torture, the promotion of truth, justice, reparation, and guarantee of non-recurrence, or the enjoyment of a safe, clean, healthy, and sustainable environment, among others.’¹⁹ An October 2021 symposium on the international law blog *Opinio Juris* and organised by the GQUAL Campaign²⁰ highlights the further international justice bodies in need of greater gender parity,

¹⁵ Thomson Reuters Institute, *Transforming Women’s Leadership in the Law: Global Report 2020*, http://images.connect.thomsonreuters.com.au/Web/TRLegalAU/%7B36f24d31-a7fb-4834-8877-54fd2019de75%7D_Transforming-Womens-Leadership-in-the-Law-Global-Report-2020.pdf.

¹⁶ *Ibid.*

¹⁷ Hilary Charlesworth, Christine Chinkin and Shelley Wright, ‘Feminist Approaches to International Law’, *The American Journal of International Law* Vol. 85, No. 4 (Oct., 1991), p 613-645.

¹⁸ Hilary Charlesworth, ‘The Women Question in International Law’, *Asian Journal of International Law*, 1, p 3338, http://regnet.anu.edu.au/sites/default/files/publications/attachments/2015-05/The%2520Women%2520Question%2520in%2520International%2520Law_0.pdf.

¹⁹ Quoted from Elizabeth Salmón, member of the Advisory Committee that drafted the report, in her *Opinio Juris* October 2021 symposium on Gender Representation. See Elizabeth Salmón, ‘Human Rights Council Advisory Committee Report on Gender Representation – A Historic Opportunity to Reverse Gender Inequality in UN Bodies,’ *Opinio Juris* (04 October 2021) <http://opiniojuris.org/2021/10/04/symposium-on-gender-representation-human-rights-council-advisory-committee-report-on-gender-representation-a-historic-opportunity-to-reverse-gender-inequality-in-un-bodies/>.

²⁰ See Viviana Krsticevic, ‘Time to Double our Efforts—New Report Creates an Exceptional Opportunity to Break the Glass Ceiling for Women in International Justice,’ *Opinio Juris* (08 October 2021) <http://opiniojuris.org/2021/10/08/symposium-on-gender-representation-time-to-double-our-efforts-new-report-creates-an-exceptional-opportunity-to-break-the-glass-ceiling-for-women-in-international-justice/>.

including in the international law commission,²¹ the International Court of Justice,²² and the International Criminal Court.²³

The gendered nature of international law is further made exclusionary by the influence and centrality of the Global North in its processes and its institutions. International legal institutions have largely developed in the Global North, speaking the institutional and professional ‘languages’ of the Global North, and often remain in the Global North— even when Global South matters necessitate litigation.²⁴

Anecdotally, it is understood that given the difficulty faced by simply practicing law, the barriers are even greater for women wishing to practice in relation to international law—let alone lead in the profession. This difficulty is compounded where women legal practitioners are from minority ethnic or religious backgrounds or where women legal practitioners have experienced the kinds of harm addressed by international justice and accountability.

Legacy of Impunity in Asia

There are legacies of impunity for mass atrocities in multiple countries including in Sri Lanka and Nepal. Additionally, there are repressive governments across the region with a track record of assaults on fundamental rights and freedoms and the commission of mass atrocities. Particular situations are cause for more concern, such as: continued military control in Myanmar, the precarious situation of minority groups including the Rohingya particularly in Bangladesh, and increasing repression in India.

²¹ Priya Pillai, ‘Representation of Women at the International Law Commission’ *Opinio Juris* (07 October 2021) <https://opiniojuris.org/2021/10/07/symposium-on-gender-representation-representation-of-women-at-the-international-law-commission/>.

²² Laura Franca Pereira & Raymundo Treves, ‘Promoting Gender Representation at the International Court of Justice’ *Opinio Juris* (07 October 2021) <https://opiniojuris.org/2021/10/07/symposium-on-gender-representation-promoting-gender-representation-at-the-international-court-of-justice/>.

²³ Angela Mudukuti, ‘The International Criminal Court’s “Boys Club” Problem’ *Opinio Juris* (07 October 2021) <https://opiniojuris.org/2021/10/07/symposium-on-gender-representation-the-international-criminal-courts-boys-club-problem/>. See also: Elizabeth Odio Benito, ‘Gender Parity in International Courts – The Voice of an International Judge’ *Opinio Juris* (04 October 2021)

²⁴ Scholar Rose Parfitt questions this in her concept of ‘international legal reproduction’ relating to how international law has evolved ‘the process through which new subjects of international law are brought into being and later disciplined by more “successful” members of the so-called international community’. Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (CUP 2019) p 12. See further the important critiques by Third World Approaches to International Law scholars, including foremost BS Chimni’s ‘Third World Approaches to International Law: A Manifesto’, *International Community Law Review* (2006) 8, pp 3–27, <https://www.jnu.ac.in/sites/default/files/Third%20World%20Manifesto%20BSChimni.pdf>.

In comparison to other regions, there is poor engagement with existing mechanisms of international justice and accountability, and a weak track record of pursuing accountability at the domestic, regional or international level.²⁵

This need for greater avenues for justice and accountability is particularly great for women survivors of international crimes.²⁶ Widespread impunity for sexual and gender-based violence continues across conflict-affected countries in general.²⁷ However, this is compounded by the patriarchal norms persisting throughout the region, as well as the shame associated with reporting this violence. In fact, a 2013 UN multi-country study of the Asia-Pacific region found that across the countries surveyed, between 72 and 97 per cent of male perpetrators of rape faced no legal consequences—even in peacetime.²⁸

The more male-oriented the legal profession is, the continued assumption of women's roles being outside legal leadership. The continued gendered assumptions about women's roles, the fewer the opportunities (or indeed even basic facilities) for women legal practitioners. The fewer opportunities for women legal practitioners, the more male-oriented the legal profession grows.

Likewise, the more Global North-oriented international legal mechanisms are, the less likely they are considered relevant in the Global South. The less relevant international legal mechanisms are seen to be in the Global South, the less expertise is developed in the Global South and the less likely international law is to be used. The less expertise and less use of international law in the Global South, the less likelihood of legal checks on impunity in the Global South and the more Global North-oriented international legal mechanisms grows.

Opening up possibilities through prioritising building women's professional leadership in the law

In addressing the barriers we have identified above, we recognise that prioritising the building of women's professional leadership in the law opens up possibilities for legal empowerment and further access to justice.

²⁵ Simon Chesterman, 'Asia's Ambivalence about International Law and Institutions: Past, Present and Futures', *European Journal of International Law*, vol 27, 4, 1 November 2016, pp 945-978, <https://doi.org/10.1093/ejil/chw051>.

²⁶ Michelle Bachelet, 'Increasing Women's Access to Justice in Post-Conflict Societies' UN Chronicle, last accessed 2 September 2021, <https://www.un.org/en/chronicle/article/increasing-womens-access-justice-post-conflict-societies>.

²⁷ Sarah Shteir, *Conflict-related Sexual and Gender-based Violence: An Introductory Overview to Support Prevention and Response Efforts*, (Australian Civil-Military Centre 2014), <https://apo.org.au/sites/default/files/resource-files/2014-02/apo-nid39108.pdf> pp 39-42.

²⁸ Emma Fulu et al, *Why Do Some Men Use Violence Against Women and How Can We Prevent It? Quantitative Findings from the United Nations Multi-country Study on Men and Violence in Asia and the Pacific*, (UNDP, UNFPA, UN Women & UNV, Bangkok, 2013) p 3.

The Asia Justice Coalition (AJC) has recently launched its four-year-long project titled “Women Leaders in International Justice & Accountability”. The project aims to develop women’s leadership in international law by building expertise and facilitating constructive dialogue around critical issues of international justice and accountability, building upon the work that we have been doing as a collective. For women legal practitioners, this initiative provides a supportive network of colleagues and builds expertise engaging practically in the niche and critically-needed discipline of international law. For women-led survivor groups, it increases the avenues available to access justice and accountability.

The AJC Secretariat's project will be situated in three jurisdictions within Asia and will focus on three themes; Migration/Refugees/Internally Displaced Persons (IDP); International criminal justice mechanisms; and Restorative and transitional justice. This project is designed to create expertise in international law, which in turn creates leadership in international law and additional avenues for access to justice and accountability. It aims to disrupt vicious cycles perpetuating gendered norms through creating networks, upskilling, and collaborative problem-solving. It shifts the site of international law to our three chosen jurisdictions. It begins from the belief that important work is already being done by women practitioners at the domestic level and that there is appetite to address international crimes creatively and, in a way, tailored to the context.

Given the gendered assumptions still present in international law, and the disparity that women leaders face, this call for input is highly relevant and timely, to identify the gap in women leadership in international law, and highlight the potential for women-led interventions in creating opportunities for legal empowerment.

It operates on the assumption that the more opportunities women legal professionals from the Global South have to develop distinctive expertise, the more experts in international law will be women from the Global South, and hence, the more tailored a legal intervention to provide access to international justice and accountability, which is then more likely to achieve positive results. This then increases the relevance of such interventions and the more they become used, the more they will provide more access for women legal professionals from the Global South leading in this field.

It also creates a safe and women-centred space to develop professionally. It works outside the ‘boys’ club’ structures to utilise existing expertise and train others by addressing urgent legal problems. It then elevates these experts in international law, who continue to challenge the existing patriarchal system through the use, and demand for, their expertise.

In this way, the initiative approaches these challenges in the same manner recommended by the UN Asia-Pacific study cited above: by ‘convening practitioners...to inspire learning and connect;’ by conducting and ‘connecting cutting-edge research...and learning from local

practitioners and activists across the region’, and by ‘supporting coordination efforts that influence changes across the spectrum of work—in the local, national and regional arenas.’²⁹

Conclusion

Women’s leadership is not just important in public office, it is crucial in the judiciary and legal system. By prioritising this, we not only effectively use the expertise that already exists, we can also systematically and structurally expand access to justice.

AJC’s project aims to increase women’s legal leadership in Global South jurisdictions by diversifying the voices in international law, increasing its relevance in these jurisdictions, and demonstrating niche expertise developed by women legal practitioners. This expertise will place them at a unique advantage in the domestic legal profession, and empower them to be consulted more often, sought after for problem-solving, and to influence how and when the law is applied. This shift of power away from dominant male voices results in greater diversity in the legal profession, bringing in fresh ideas and better representation of lived experience.

Women legal leaders who gain prominence domestically will also receive greater recognition and opportunities on the international stage, which will ultimately shift the assumed location of international law from the Global North to the Global South. This global shift better represents and adapts to provide avenues for justice and accountability, and benefits the international community as a whole.

²⁹ Emma Fulu et al, *Why Do Some Men Use Violence Against Women and How Can We Prevent It? Quantitative Findings from the United Nations Multi-country Study on Men and Violence in Asia and the Pacific*, (UNDP, UNFPA, UN Women & UNV, Bangkok, 2013) p 101.